**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF TEXAS**
**MARSHALL DIVISION**

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| WEB TELEPHONY, LLC.,<br>an Illinois corporation,<br><br>Plaintiff,<br><br>vs.<br><br>Verizon Communications Inc.,[1] a Delaware corporation, AT&T Corp., a New York corporation, AT&T Inc., a Delaware corporation, EarthLink, Inc., a Delaware corporation, SunRocket Corp., a Delaware corporation, Vonage Holdings Corp., a Delaware corporation, and Vonage America, Inc., a Delaware corporation,<br><br>Defendants. | Case No.: 2:07cv00085 (DF)<br><br>Answer and Counterclaim to First Amended Complaint for Patent Infringement<br>(U.S. Patent Nos. 6,445,694 and 6,785,266)<br><br>Jury Demanded |

**VERIZON'S ANSWER TO FIRST AMENDED COMPLAINT AND AMENDED COUNTERCLAIMS**

Pursuant to Rules 8, 12, 13, and 15 of the Federal Rules of Civil Procedure and the Local Civil Rules of this Court, Defendant Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance ("Verizon") answers the allegations of Web Telephony LLC's ("Web Telephony") First Amended Complaint for Patent Infringement (the "First Amended Complaint") and asserts counterclaims as follows:

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[1] There is an inadvertent error in the caption of this case. As agreed to between the parties and correctly noted in paragraph 6 of the First Amended Complaint, the correct party should be Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance and not Verizon Communications Inc. The parties have consulted and will submit a joint consent order to the Court correcting this mistake.

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## INTRODUCTION

1. Verizon admits that United States Patent No. 6,445,694 (the "'694 patent") is entitled "Internet Controlled Telephone System." Verizon further admits that United States Patent No. 6,785,266 (the "'266 patent") is entitled "Internet Controlled Telephone System." Verizon denies the remaining allegations of paragraph 1 of the First Amended Complaint with respect to Verizon. Verizon lacks sufficient knowledge and information to admit or deny the remaining allegations of paragraph 1 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same.

## JURISDICTION AND VENUE

2. Verizon admits that Web Telephony has alleged patent infringement in this action. No answer is required to the remaining allegations contained in paragraph 2 of the First Amended Complaint, which merely state conclusions of law.

3. Verizon denies that it is responsible for acts of infringement in this District, or that it has delivered or caused to be delivered infringing products in this District. Verizon lacks sufficient knowledge and information to admit or deny the remaining allegations of paragraph 3 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same. No answer is required to the remaining allegations contained in paragraph 3 of the First Amended Complaint, which merely state conclusions of law.

## PLAINTIFF WEB TELEPHONY

4. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 4 of the First Amended Complaint, and therefore denies the same.

## THE PATENTS

5. Verizon admits that the ‘694 patent indicates that it was issued by the United States Patent and Trademark Office (“PTO”) on September 3, 2002, and that a copy of the ‘694 patent was attached as Exhibit A to the First Amended Complaint. Verizon further admits that the ‘266 patent indicates it was issued by the PTO on August 31, 2004, and that a copy of the ‘266 patent was attached as Exhibit B to the First Amended Complaint. Upon information and belief, Verizon denies the remaining allegations contained in paragraph 5 of the First Amended Complaint.

**DEFENDANTS**

6. Verizon admits the allegations contained in paragraph 6 of the First Amended Complaint.

7. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 7 of the First Amended Complaint, and therefore denies the same.

8. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 8 of the First Amended Complaint, and therefore denies the same.

9. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 9 of the First Amended Complaint, and therefore denies the same.

10. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 10 of the First Amended Complaint, and therefore denies the same.

11. Verizon lacks sufficient knowledge and information to admit or deny the

allegations contained in paragraph 11 of the First Amended Complaint, and therefore denies the same.

**First Claim for Patent Infringement (‘694 Patent) Against Defendants**

12. Verizon incorporates its responses to paragraphs 1-11 of the First Amended Complaint as though fully set forth herein.

13. Verizon admits that the ‘694 patent indicates that it was issued by the PTO September 3, 2002. Upon information and belief, Verizon denies the remaining allegations contained in paragraph 13 of the First Amended Complaint.

14. Upon information and belief, Verizon denies the allegations contained in paragraph 14 of the First Amended Complaint.

15. Verizon denies the allegations contained in paragraph 15 of the First Amended Complaint with respect to Verizon. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 15 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same.

16. Verizon denies the allegations contained in paragraph 16 of the First Amended Complaint with respect to Verizon. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 16 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same.

17. Verizon denies the allegations contained in paragraph 17 of the First Amended Complaint with respect to Verizon. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 17 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same.

**Second Claim for Patent Infringement (‘266 Patent) Against Defendants**

18. Verizon incorporates its responses to paragraphs 1-11 of the First Amended Complaint as though fully set forth herein.

19. Verizon admits that the ‘266 patent indicates it was issued by the PTO on August 31, 2004. Upon information and belief, Verizon denies the remaining allegations contained in paragraph 19 of the First Amended Complaint.

20. Upon information and belief, Verizon denies the allegations contained in paragraph 20 of the First Amended Complaint.

21. Verizon denies the allegations contained in paragraph 21 of the First Amended Complaint with respect to Verizon. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 21 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same.

22. Verizon denies the allegations contained in paragraph 22 of the First Amended Complaint with respect to Verizon. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 22 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same.

23. Verizon denies the allegations contained in paragraph 23 of the First Amended Complaint with respect to Verizon. Verizon lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 23 of the First Amended Complaint that pertain to the other defendants, and therefore denies the same.

24. Verizon admits that Web Telephony has demanded a trial by jury of all issues.

**DEFENSES AND AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

25. Web Telephony is not entitled to any relief against Verizon because Verizon has not directly or indirectly infringed the '694 patent and/or the '266 patent.

**SECOND AFFIRMATIVE DEFENSE**

26. One or more of the claims of the '694 patent and/or the '266 patent are invalid for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability under Title 35 of the United States Code § 101 *et seq.*, including without limitation, § § 102, 103, and/or 112.

**THIRD AFFIRMATIVE DEFENSE**

27. The '694 and '266 patents are unenforceable against Verizon because of waiver, estoppel, laches, unclean hands, or other applicable equitable doctrines.

**FOURTH AFFIRMATIVE DEFENSE**

28. Verizon repeats and realleges the allegations in Counterclaim Five, below, as if fully set forth herein.

29. The '694 and '266 patents are unenforceable because of inequitable conduct committed by the named inventor, and/or others associated with him during the filing and/or prosecution of the '694 and '266 patents before the PTO. As detailed below, Robert D. Swartz, and/or those acting on his behalf, made, with deceptive intent, material misrepresentations to the PTO concerning, *inter alia*, the inventorship and priority date of the '694 and '266 patents.

**COUNTERCLAIMS**

Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance ("Verizon") for its counterclaims against Web Telephony LLC ("Web Telephony") alleges as follows:

## PARTIES

1. Counterclaim-plaintiff Verizon is a corporation organized and existing under the laws of Delaware, with its principal place of business at 1320 Court House Road, Arlington, Virginia, 22201.

2. Upon information and belief, counter-claim-defendant Web Telephony LLC is a limited liability company organized and existing under the laws of the state of Illinois.

## JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201.

4. Web Telephony is subject to personal jurisdiction in this District.

5. Venue for this action is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

## FACTS

6. Upon information and belief, Web Telephony claims to be the owner of all right, title, and interest in and to U.S. Patent Nos. 6,445,694 (the "'694 patent") and 6,785,266 (the "'266 patent").

7. Web Telephony has accused Verizon of infringement of the '694 and '266 patents.

8. An actual case or controversy exists between the parties concerning the infringement, validity, and enforceability of the '694 patent and the '266 patent.

## COUNT ONE

## (Non-infringement of the '694 Patent)

9. Verizon repeats and re-alleges the allegations of the preceding counterclaim

paragraphs 1-8 as if fully set forth herein.

10. Verizon has not directly or indirectly infringed and is not directly or indirectly infringing the ‘694 patent.

11. Verizon is entitled to a declaratory judgment that it has not infringed and is not infringing the ‘694 patent.

**COUNT TWO**

**(Invalidity of the ‘694 Patent)**

12. Verizon repeats and re-alleges the allegations of the preceding counterclaim paragraphs 1-8 as if fully set forth herein.

13. One or more claims of the ‘694 patent are invalid for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability under Title 35 of the United States Code § 101 *et seq.*, including without limitation, §§ 102, 103, and/or 112.

14. Verizon is entitled to a declaratory judgment that the ‘694 patent is invalid.

**COUNT THREE**

**(Non-infringement of the ‘266 Patent)**

15. Verizon repeats and re-alleges the allegations of the preceding counterclaim paragraphs 1-8 as if fully set forth herein.

16. Verizon has not directly or indirectly infringed and is not directly or indirectly infringing the ‘266 patent.

17. Verizon is entitled to a declaratory judgment that it has not infringed and is not infringing the ‘266 patent.

**COUNT FOUR**

**(Invalidity of the ‘266 Patent)**

18. Verizon repeats and re-alleges the allegations of the preceding counterclaim paragraphs 1-8 as if fully set forth herein.

19. One or more claims of the ‘266 patent are invalid for failing to meet one or more of the requisite statutory and decisional requirements and/or conditions for patentability under Title 35 of the United States Code § 101 *et seq.*, including without limitation, §§ 102, 103, and/or 112.

20. Verizon is entitled to a declaratory judgment that the ‘266 patent is invalid.

**COUNT FIVE**

**(Unenforceability of the ‘694 and ‘266 patents)**

21. Verizon repeats and re-alleges the allegations of the preceding counterclaim paragraphs 1-8 as if fully set forth herein.

22. The ‘694 and ‘266 patents are unenforceable due to inequitable conduct committed by the named inventor Robert Swartz, and/or those acting on his behalf during the filing and/or prosecution of the ‘694 and ‘266 patents, and Verizon is entitled to a declaration to that effect. As set forth more fully below, Mr. Swartz and/or those acting on his behalf acted with deceptive intent in making materially false and/or misleading representations and omitting material information during proceedings before the PTO.

23. Upon information and belief, prior to March 2, 1998, Vail Systems, Inc. (“Vail”) decided to seek patent protection for alleged inventions made by Vail employee Alex Kurganov in connection with his work on a project involving telephony. Vail retained Mr.

Swartz to oversee the filing of a patent application directed to Mr. Kurganov's alleged inventions.

24. Upon information and belief, Mr. Kurganov provided Mr. Swartz with materials and information concerning Mr. Kurganov's work at Vail, including a description of the features of a telephony system he had been working on and a copy of the relevant source code.

25. Upon information and belief, on March 3, 1997, a patent attorney working under Mr. Swartz's direction filed U.S. Provisional Patent Application Serial No. 60/040,056 ("the Vail/Kurganov Provisional") with the PTO. Upon information and belief, unbeknownst to Vail and Mr. Kurganov, Mr. Swartz improperly and with deceptive intent instructed the attorney to name Mr. Swartz as co-inventor on the Vail/Kurganov Provisional.

26. Mr. Swartz subsequently filed patent applications ("Swartz Applications") improperly purporting to claim priority to the Vail/Kurganov Provisional, but not naming Mr. Kurganov as a co-inventor. Specifically, but without limitation, on March 2, 1998, Mr. Swartz filed Application No. 09/033,287, which issued as the '694 patent; and, on August 27, 2002, Mr. Swartz filed Application No. 10/228,596, which issued as the '266 patent. The Swartz Applications improperly name Mr. Swartz as the sole inventor.

27. Mr. Swartz and/or those acting on his behalf thus made material misrepresentations to the PTO with deceptive intent regarding (a) the alleged inventorship of the '694 and '266 patents, and (b) the right to claim priority to the Vail/Kurganov Provisional.

28. As a result of the deceptive, inequitable, and misleading conduct set forth above, the '694 and '266 patents are unenforceable.

**PRAYER FOR RELIEF**

WHEREFORE, Verizon requests the Court to enter a judgment in its favor and against Web Telephony as follows:

a. Dismiss the First Amended Complaint in its entirety, with prejudice;

b. Enter judgment in favor of Verizon and against Web Telephony;

c. Declare that Verizon has not infringed, and is not infringing, the ‘694 and ‘266 patents;

d. Declare that one or more of the claims of the ‘694 and ‘266 patents are invalid, void, and/or unenforceable against Verizon;

e. Award Verizon its costs (including expert fees), disbursements, and reasonable attorneys' fees incurred in this action, pursuant to 35 U.S.C. § 285; and

f. Grant such further relief as is just and proper.

Dated: August 3, 2007

Respectfully submitted,

BELL ATLANTIC COMMUNICATIONS, INC.

____*/s/__Damon Young*_____________________

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of this document via email, facsimile and/or U.S. First Class Mail.

DATED: August 3, 2007.

*/s/ Damon Young*________________